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IN RE: VIOXX® LITIGATION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ATLANTIC COUNTY

CASE NO. 619

CIVIL ACTION
APPLICABLE TO ALL CASES

**CASE MANAGEMENT ORDER FOR
CLAIMS NOT SUBMITTED FOR THE
RESOLUTION PROGRAM**

THIS MATTER having been brought before the Court upon the application of Defendant Merck & Co., Inc. for an Order requiring all plaintiffs represented by counsel with personal injury claims pending in Case No. 619 ("Plaintiff" or "Plaintiffs") as of November 9, 2007 to produce specified information regarding their claims, unless the claim is submitted in good faith to the Program established by the Master Settlement Agreement ("Resolution Program") or is a claim of a resident of a country other than the United States, its possessions and territories, and for good cause shown,

WHEREAS this litigation has been coordinated in this Court since 2003, and has been very actively litigated since then, including the production of tens of millions of pages of

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documents and the taking of hundreds of depositions, there have been several trials, and Merck has signed a Settlement Agreement that, if successful, will result in the payment of \$4.85 billion into two funds to resolve eligible personal injury claims; and

WHEREAS the Court finds that in these circumstances this Case Management Order is appropriate to further the ongoing management of the litigation

IT IS on this 20th day of February 2008,

ORDERED as follows:

I. Expert Reports

- A. Each Plaintiff who has not submitted his or her claim to the Resolution Program shall serve on the Defendant: A case specific expert report from a medical expert attesting (i) to a reasonable degree of medical probability that the Plaintiff suffered an injury and (ii) that Vioxx was a substantial contributing factor of the injury. The case specific expert report must include (i) an explanation of the basis of the attestation that Vioxx was a substantial contributing factor of the Plaintiff to suffer the injury, (ii) a description of the specific injuries allegedly suffered, (iii) a description of the specific medical findings that support the diagnosis of those injuries; and (iv) identification of all documents relied on by the expert in forming his opinions.
- B. The case specific expert reports shall be served on the Defendant in accordance with the following schedule:
 - 1. For Counsel who have filed 10 or fewer cases subject to this Order that they have not submitted to the Resolution Program, the reports shall be served on or before June 1, 2008.
 - 2. For Counsel who have filed more than 10 but fewer than 50 such cases, the reports shall be served on or before August 1, 2008.
 - 3. For Counsel who have filed 50 or more such cases, for Plaintiffs whose last name begins with:
 - (a) the letters A through L, the reports shall be served on or before August 1, 2008;
 - (a) the letters M through Z, the reports shall be served on or before October 1, 2008;

II. Non Compliance.

- A. The Defendant may move to dismiss any case for which an expert report is not served by the applicable deadline.

III. Relief from Deadlines.

- A. The Court expects that the vast majority of counsel should have no problem meeting the deadlines in this Order. If a counsel who in good faith is legitimately pursuing a claim needs additional time, such additional time can only be obtained: (1) with the written consent of Merck or (2) by the Court on motion seeking relief from the Court filed prior to the expiration of the applicable deadline. Any such motion must include a certification from counsel that counsel has retained an expert for the subject case.

IV. March 28 Order.


- A. Nothing in this Order abrogates or replaces each Plaintiff's obligation to submit the Plaintiff Fact Sheet, authorizations, and other materials required under the Order issued on March 28, 2005. The Plaintiff need not re-submit a Plaintiff Fact Sheet if one has already been submitted with respect to his or her claims

V. Exclusions from Order.

- A. This Order does not apply to the claims of residents of countries other than the United States and its possessions and territories
- B. This Order does not apply to cases submitted to the Resolution Program that are subsequently rejected.

VI. Prior Order.

- A. This Order supersedes the prior Order entered on November 9, 2007.



HON. CAROL E. HIGBEE, P.J.Cv.